

as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation. The election may be made whether or not the foreign corporation is engaged in trade or business in the United States during the taxable year for which the election is made or whether or not the corporation has income from real property which for the taxable year is effectively connected with the conduct of a trade or business in the United States, but it may be made only with respect to income from sources within the United States which, without regard to section 882(d) and § 1.871-10, is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation. The income to which the election applies shall be determined as provided in paragraph (b) of § 1.871-10 and shall be subject to tax in the manner, and subject to the same conditions, provided by section 882(a)(1) and paragraph (b)(2) of § 1.882-1. Section 871(d) (2) and (3) and the provisions of § 1.871-10 thereunder shall apply in respect of an election under section 882(d) in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(b) *Interest on U.S. obligations received by banks organized in possessions.* Interest received from sources within the United States during the taxable year on obligations of the United States by a foreign corporation created or organized in, or under the law of, a possession of the United States and carrying on the banking business in a possession of the United States during the taxable year shall be treated, pursuant to section 882(e) and this paragraph, as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation. This paragraph applies whether or not the foreign corporation is engaged in trade or business in the United States at any time during the taxable year but only with respect to income which, without regard to this paragraph, is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation. Any interest to which this para-

graph applies shall be subject to tax in the manner, and subject to the same conditions, provided by section 882(a)(1) and paragraph (b)(2) of § 1.882-1. To the extent that deductions are connected with interest to which this paragraph applies, they shall be treated for purposes of section 882(c)(1) and the regulations thereunder as connected with income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by the foreign corporation. An election by the taxpayer is not required in respect of the income to which this paragraph applies. For purposes of this paragraph the term "possession of the United States" includes Guam, the Midway Islands, the Panama Canal Zone, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Wake Island.

(c) *Treatment of income.* Any income in respect of which an election described in paragraph (a) of this section is in effect, and any interest to which paragraph (b) of this section applies, shall be treated, for purposes of paragraph (b)(2) of § 1.882-1 and paragraph (a) of § 1.1441-4, as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by the foreign corporation. A foreign corporation shall not be treated as being engaged in trade or business in the United States merely by reason of having such income for the taxable year.

(d) *Effective date.* This section applies for taxable years beginning after December 31, 1966. There are no corresponding rules in this part for taxable years beginning before January 1, 1967.

[T.D. 7293, 38 FR 32798, Nov. 28, 1973]

§ 1.882-3 Gross income of a foreign corporation.

(a) *In general—(1) Inclusions.* The gross income of a foreign corporation for any taxable year includes only (i) the gross income which is derived from sources within the United States and which is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation and (ii) the gross income, irrespective of whether such income is derived from sources within

or without the United States, which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation. For the determination of the sources of income, see sections 861 through 863, and the regulations thereunder. For the determination of whether income from sources within or without the United States is effectively connected for the taxable year with the conduct of a trade or business in the United States, see sections 864(c) and 882 (d) and (e), §§ 1.864-3 through 1.864-7, and § 1.882-2.

(2) *Exchange transactions.* Even though a foreign corporation which effects certain transactions in the United States in stocks, securities, or commodities during the taxable year may not, by reason of section 864(b)(2) and paragraph (c) or (d) of § 1.864-2, be engaged in trade or business in the United States during the taxable year through the effecting of such transactions, nevertheless it shall be required to include in gross income for the taxable year the gains and profits from those transactions to the extent required by paragraph (c) of § 1.881-2 or by paragraph (a) of § 1.882-1.

(3) *Exclusions.* For exclusions from gross income of a foreign corporation, see § 1.883-1.

(b) *Foreign corporations not engaged in U.S. business.* In the case of a foreign corporation which at no time during the taxable year is engaged in trade or business in the United States the gross income shall include only (1) the gross income from sources within the United States which is described in section 881(a) and paragraphs (b) and (c) of § 1.881-2, and (2) the gross income from sources within the United States which, by reason of section 882 (d) or (e) and § 1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation.

(c) *Foreign corporations engaged in U.S. business.* In the case of a foreign corporation which is engaged in trade or business in the United States at any time during the taxable year, the gross income shall include (1) the gross income from sources within and without the United States which is effectively connected for the taxable year with the

conduct of a trade or business in the United States by that corporation, (2) the gross income from sources within the United States which, by reason of section 882 (d) or (e) and § 1.882-2, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation, and (3) the gross income from sources within the United States which is described in section 881(a) and paragraphs (b) and (c) of § 1.881-2 and is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation.

(d) *Effective date.* This section applies for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.882-2 (Revised as of January 1, 1971).

[T.D. 7293, 38 FR 32799, Nov. 28, 1973]

§ 1.882-4 Allowance of deductions and credits to foreign corporations.

(a) *Foreign corporations—(1) In general.* A foreign corporation that is engaged in, or receives income treated as effectively connected with, a trade or business within the United States is allowed the deductions which are properly allocated and apportioned to the foreign corporation's gross income which is effectively connected, or treated as effectively connected, with its conduct of a trade or business within the United States. The foreign corporation is entitled to credits which are attributable to that effectively connected income. No provision of this section (other than paragraph (b)(2)) shall be construed to deny the credits provided by sections 33, 34 and 852(b)(3)(D)(ii) or the deduction allowed by section 170.

(2) *Return necessary.* A foreign corporation shall receive the benefit of the deductions and credits otherwise allowed to it with respect to the income tax, only if it timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of its taxable income which is effectively connected, or treated as effectively connected, for the taxable year with the conduct of a trade or business in the United States by that